

(2008) 07 SHI CK 0027
In the High Court Of Himachal Pradesh

Kewal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Citation : (2008) 3 ShimLC 180

Hon'ble Judges : Surjit Singh, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.B. Misra, J.—None appears on behalf of respondent No. 4, despite notices at the initial stage as also the notice of actual date of hearing.

2. Heard learned Counsel appearing for the parties.

3. The petitioner has challenged the order dated 10th October, 2000, passed in OA No. 1044/HP/97, whereby the Original Application, above mentioned, preferred by the writ petitioner, was dismissed by the learned Central Administrative Tribunal (for short learned Tribunal).

4. (i) In order to appreciate the controversy between the parties, it is necessary to give background of the case. The petitioner was appointed on 24.5.1994 as substitute Extra Departmental Delivery Agent (for short "EDDA"), on purely temporary, adhoc and stop-gap-arrangement on 24th May, 1994.

(ii) It appears that respondents-authorities invited applications for selection to the regular post of "EDDA". The selection was to be made in consonance to Clause (2) indicated in Section IV of the Method of Recruitment reproduced as below:

2. Educational Qualifications:

ED Sub-Postmasters and ED Matriculation. (The selection should be Branch Postmasters based on the marks secured in the Matriculation or equivalent

examinations. No weightage need be given for any qualification(s) higher than Matriculation)

ED Delivery Agents ED Stamp VIII standard. Preference may be given to Vendors and all other the candidates with Matriculation categories of EDDAs qualifications. No weightage should be given for any qualification higher than Matriculation. Should have sufficient working knowledge of the regional language and simple arithmetic so as to be able to discharge their duties satisfactorily. Categories such as ED Messengers should also have enough working knowledge of English.

(iii) The Employment Exchange nominated 21 candidates for the said post including the petitioner. All the candidates were asked to send their applications as well as Bio-data etc. in the prescribed form alongwith other necessary certificates/testimonials. Out of 21 candidates, only 7 candidates, including the petitioner, responded and applied for the said post of "EDDA", Masatgarh. After scrutiny of applications and other certificates/testimonials, one Shri Surinder Kumar was found to be first in the list but he was not offered the appointment as his one relative Shri Ashok Kumar, EDMC was already working in the same Post Office, therefore, respondent No. 4 was approved to the post of "EDDA" w.e.f. 17.5.1995 and the service of the petitioner was terminated by an order dated 16.5.1995, which was challenged by way of OA No. 725-HP/95, which was disposed of by learned Tribunal on 1.11.1996 with direction to treat the said Original Application as representation. When petitioner's claim for appointment as "EDDA" was rejected on 8.1.1997, the petitioner filed another OA No. 1044/1997.

(iv) The petitioner submitted that he is in possession of Matriculation certificate with 456 marks, out of 950 and was appointed on 24.5.1994 as "EDDA" against the vacant post in Post Office Mastgarh but the respondents without disclosing about the criteria for the regular selection of "EDDA" has made appointment of respondent No. 4; on the presumption that the merit of VIII standard/Middle Class was to be taken into consideration, then Shri Surinder Singh by virtue of securing highest marks in VIII standard/Middle Class should have been selected instead of respondent No. 4. It has also been submitted that the petitioner should have been given preference over other candidates since he was Matriculate having highest marks and had experience of working to the post of "EDDA".

(v) The respondents, on the other hand, had opposed the Original Application by stating that the petitioner was asked to work as substitute "EDDA" on the responsibility of Shri Kishore Chand, "EDDA", which was a temporary, adhoc and stop-gap-arrangement till the post was filled up on regular basis. One Shri Surinder Kumar despite having secured first position in the list prepared on the basis of VIII standard/Middle pass Examination, could not be given appointment as his relative Shri Ashok Kumar, EDMC, was already working in the same Post Office, therefore, the appointment was given to the next eligible candidate,

namely Shri Sridhar, respondent No. 4 herein, who was second in the merit list and Shri Kishore Chand who had provided Shri Kewal Singh as his substitute as "EDDA" on his responsibility, also has withdrawn his responsibility vide his letter dated 16.5.1995.

5. Keeping in view the averments and the submissions of the petitioner and taking into consideration the rival contentions of the respondents, learned Tribunal rejected OA No. 1044/HP/97 by the impugned order with observations as below:

We find no force in the contention of the applicant that preference is to be given to Matriculate and the applicant is having highest marks in the Matric Class, but Respondent No. 3 has ignored this fact at the time of making selection for the post of EDDA. We have been taking a view that preference clause can be operated by any department where they find that other things are equal amongst two candidates who are found most meritorious, may be having equal marks in the Middle Standard. When other things are equal amongst such candidates, resort can be taken to the preference clause and that is only the situation where it can be operated. But in the present case, there is no such situation. Hence, we find no infirmity in the order appointing Respondent No. 4 on the post of EDDA.

6. The learned Counsel for the petitioner, on the other hand, while inviting the attention of this Court to the Educational Qualification for the regular selection to the post of "EDDA", has argued that nothing has been prescribed in reference to the method of recruitment that a merit list is to be prepared on the basis of performance of candidates in Middle class/VIII standard. The learned Counsel has further submitted that as per criteria No. 2 the Educational Qualification for all the candidates is VIII standard and preference may be given to the candidates with matriculation qualification, and that no weightage was to be given for any qualification higher than matriculation. It reveals that the merit has not to be prepared solely on the basis of the marks obtained by a candidate in VIII Standard but the assessment, or evaluation or merit has to be prepared taking into consideration the marks of a candidate in VIII standard/Middle standard as well as in matriculation.

7. According to K.J. Aiyar's Judicial Dictionary, Twelfth Edition (1998), "preference" means "prior right, advantage, precedence etc. But how would it be possible to give precedence over the other. It signifies that other things being equal, one will have preference over the others. "Preference" in the context of stage carriage permit would mean that other things generally appearing to the qualificatively and quantitatively equal though not with mathematical accuracy, statutory provision will tilt the balance in favour of the Undertaking. Sher Singh Vs. Union of India (UOI) and Others,

8. According to Words and Phrases, Volume 33, a "preference" is the act of preferring one thing above another, or the choice of one thing rather than another, or the state of being chosen or preferred before others. (MacNabb v.

Sheridan, MD 29 A.2d 271, 272, 181 Md. 245).

9. In *State of U.P. and Another Vs. Om Prakash and Others*, , where the selection of Medical Officers of Homeopathy was to be made on the basis of oral interview and the marks awarded in reference to the qualification, prescribed as requisite qualification in the advertisement, as per Rule 8 of U.P. Homeopathic Medical Services and the candidates with degree or diploma in Homeopathy were treated to be eligible but by proviso added thereto preference was to be given to degree-holders in such case, the Supreme Court has observed that although both diploma and decree holders were equally eligible to compete, where some of them were assessed to be equally positioned, then only the degree-holders would be preferred over the diploma-holders while preparing the merit list, however, that does not mean that the degree-holders would be preferred en bloc over the diploma-holders irrespective of their inter-se-merit and suitability. It was observed in *Om Prakash's* case (supra) as follows:

16. This Court has consistently held that when selection is made on the basis of merit assessed through the competitive examination and interview, preference to additional qualification would mean other things being qualitatively and quantitatively equal, those having additional qualification would be preferred. It does not mean en bloc preference irrespective of inter se merit and suitability.

17. In *Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others*, , this Court held that preferential qualification do not as of right entitle to selection. In that case the advertisement inviting applications for the post of Dental Officers prescribed B.D.S. as the minimum qualification but stipulated preference for higher dental qualification. This Court held at SCC p.285 as under:

Admittedly, in the advertisement which was published calling for applications from the candidates for the posts of Dental Officer it was clearly stipulated that the minimum qualification for the post is B.D.S. It was also stipulated that preference should be given for higher dental qualification. There is also no dispute that M.D.S. is higher qualification than the minimum qualification required for the post and the Respondent No. 1 was having that degree. The question then arises is whether a person holding a M.D.S. qualification is entitled to be selected and appointed as of right by virtue of the aforesaid advertisement conferring preference for higher qualification? The answer to the aforesaid question must be in the negative. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher person automatically is entitled to be selected and appointed. In the suitability of a person for the post, the expert body like Public Service Commission in the absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate. The competence

and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the other necessary factors like career of the candidate throughout his educational curriculum, experience in any field in which the selection is going to be held; his general aptitude for the job to be ascertained in course of interview, extra-curriculum activities like sports and other allied subjects personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held. In this view of the matter, the High Court in our considered opinion was wholly in error in holding that a M.D.S. qualified person like Respondent No. 1 was entitled to be selected and appointed when the Government indicated in the advertisement that higher qualification person would get some preference. The said conclusion of the High Court, therefore, is wholly unsustainable and must be reversed.

18. This Court again considered the same question in *Secretary, The Secretary, Andhra Pradesh Public Service Commission Vs. Y.V.V.R. Srinivasulu and Others*, and held at SCC p. 348 as under:

The word "preference" in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the case involve, a qualifying test, a written examination and oral test or interview and the final list of selection has to be on the basis of the marks obtained in them. The suitability and all round merit, if had to be adjudged in that manner only what justification could there be for overriding all these merely because, a particular candidate is in possession of an additional qualification on the basis of which, a preference has also been envisaged. The rules do not provide for separate classification of those . candidates or apply different norms of selection for them. The "preference" envisaged in the rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional cannot be enforced as a rule of reservation or rule of complete. Such a construction would not only undermine the scheme of selection envisaged, through the Public Service Commission, on the basis of merit performance but also would work great hardship and injustice to those who possess the required minimum educational qualification with which they are entitled to compete with those possessing additional qualification too, and demonstrate their superiority merit wise and their suitability for the post. It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when anyone or more of them are found equally positioned by using the additional qualification as a tilting

factor, in their favour vis-a-vis others in the matter of actual selection.

19. In the instant case, the requisite academic for the post of homeopathy as prescribed in the advertisement was a recognized degree in Homeopathy or a recognized diploma in Homeopathy. A proviso has been added that preference will be given to degree holders. This would mean that a recognized diploma in homeopathy prescribed in the advertisement is also a required minimum educational qualification with which they are entitled to compete with those candidates possessing the degree. The word preference would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates visa-vis others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability.

20. That apart this Court has consistently held that inclusion of candidate's name in merit list does not confer any indefeasible right to be appointed. *Shankarsan Dash Vs. Union of India*, and *Union Territory of Chandigarh Vs. Dilbagh Singh and others*,

10. In our considered view, in the case of *Om Prakash (supra)*, advertisement prescribed, as per applicable "Rule", both degree as well as diploma in Homeopathy the requisite qualification, but while finalizing selection on merit preference was to be given to the degree-holders, in those circumstances when one or more of the candidates were found equally positioned then only the additional qualification could be said to be a tilting factor in favour of candidates vis-a-vis others in merit to be prepared but in the present case, facts and circumstances are different, where both VIII standard/Middle standard and Matriculation are not requisite qualifications for the post of "EDDA" but requisite qualification is VIII standard only but preference could be given to Matriculate. As such, the decision of *Om Prakash (supra)* is distinguishable in the facts and circumstances of present case.

11. In *Smt. Kiran Singh Vs. Union of India (UOI) and Others*, the selection to the post of Extra-Departmental Branch Postmaster was in question where essential qualification for the post was Matriculation with indication that preference was based on income criterion in case of two equally qualified candidates and the preference was to be given to the candidate having "adequate means of livelihood derived from landed property or immovable assets" if candidate is otherwise eligible for appointment, with further condition that no weightage would be given for any higher qualification. In the light of such conditions and guidelines, when the writ petitioner having secured 65.80 marks in comparison to 66.80 marks secured by private respondent in High School examination but as per report writ petitioner having more than 32 decimal land (her monthly income as Rs. 1000/- and annual income as Rs. 12,000/-) in comparison to the private

respondent (having 15 decimal unarable land only full of rubbles (kankar) in her name and having no income from agriculture) and on the basis of the testimonials of the candidates, appearing for the interview, the Selection Committee finding the writ petitioner suitable had appointed her and as such her appointment was held to be justifiable by the Supreme Court, as she was fulfilling essential qualification and requisite eligibility preferential criterion in comparison to the private respondent, who was lacking income criterion as preferential qualification.

12. The Supreme Court in *Surinder Singh v. Union of India* (2007) 11 Scc 599, has held the writ petitioner to be entitled to the post of Extra-Departmental Delivery Agent (EDDA), in view of the facts and the circumstances, where the Postal Authorities had issued a Circular for recruitment to various posts, including the post of "EDDA", by prescribing minimum educational qualification for "EDDA" to be 8th standard pass, with indication that the preference will be given to the candidates with matriculation qualification. The writ petitioner, having 55.8% marks in matriculation examination in comparison to the private respondent who had secured 41% marks in the matriculation examination, was selected by the Selection Committee, the selection being challenged by the private respondent on the ground that as per Circular educational qualification was 8th standard and since the private respondent had secured more marks in 8th standard examination, the writ petitioner could not have been selected on the basis of the preferential qualification. Learned Tribunal allowed the claim of the private respondent and directed the authorities to hold fresh selection. Writ petition filed by the writ petitioner was dismissed by the High Court. Dismissal of the writ petition by the High Court was held to be illegal and the writ petitioner's appointment was upheld by the Supreme Court with observations as below:

13. We have perused the Guidelines/Norms/Instructions dated 24.3.1993 formulated by the Government of India, Ministry of Communications, Department of Posts, on the subject of revision of educational qualifications prescribed for recruitment to various categories of ED Agents. Sub-clause (iv) of Clause 2 of those Guidelines/Norms/Instructions prescribes that the minimum educational qualifications for ED Delivery Agents, ED Stamp Vendors and other categories of ED should be 8th standard. Preference may be given to the candidates with Matriculation qualification. However, it is specified that no preference should be given for any qualification higher than Matriculation. It appears from the record that the Directorate, Post Offices, vide another Circular No. 19-17/97-ED & Trg. dated 21.11.1997, has decided that the merit of candidates for selection to the post of EDDA should be on the basis of the marks obtained in preferential qualification (i.e. Matriculation) if such candidates are available, otherwise on the basis of the essential qualification, viz. 8th standard.

14. Copies of the latest Guidelines/Norms/Instructions issued by respondent No. 1 were signed by CPMG, HR Ambala respondent No. 2 herein who forwarded them to the Superintendent of Post Offices in his Division. Superintendent of

Posts, Kurukshetra, Dn. 136118 circulated the Circular of respondent No. 1 to all recruiting units established in his Division for information and necessary action. Consequently, Assistant Superintendent of Post Offices, North Division, Kurukshetra respondent No. 3 herein issued requisition to the Employment Exchange for sponsoring the names of eligible candidates for filling up the post of EDDA. In addition, applications were invited from open market through public notice. In all, 20 candidates including the appellant and Dharampal respondent No. 4 herein appeared before the Selection Committee constituted for the selection to the post of EDDA. The Selection Committee had selected the appellant on the basis of the preferential qualification because he has, admittedly, secured 55.8% marks in comparison to respondent No. 4 who secured 41% marks in the Matriculation examination. It is not in dispute that the requisite minimum qualification for the post of EDDA has been prescribed as 8th standard. The selection of the appellant has been made by the Selection Committee strictly in accordance with the latest Guidelines/Norms/Instructions framed by the Department from time to time.

16. In our view, in service jurisprudence the prescription of preferential qualification not only refers to numeric superiority but is essentially related to better mental capacity, ability and maturity to shoulder the responsibilities. which are entrusted to the candidates after their selection to a particular post. All the more, it is important for efficient and effective administration. The basic object of prescribing a minimum qualification is to put a cut off level for a particular job in accordance with the minimum competency required for the performance of that Job. The object of prescribing preferential qualification is to select the best amongst the better candidates who possess more competence than the others. Sub-clause (iv) of Clause 2 puts a limit with respect to preferential qualification by way of a clear stipulation that no preference should be given to the qualification above Matriculation. Hence, the preferential qualification was considered to be more effective and efficient and also it was a clear assumption that a candidate possessing the same is best suited for the post in question.

18. In Government of Andhra Pradesh Vs. P. Dilip Kumar and Another, , this Court in paragraph 13 held as under:

13. ...There is nothing arbitrary or unreasonable in the preferring a candidate with higher qualification for service. It is well settled by a catena of decisions that classification on the basis of higher educational qualification to achieve higher administrative efficiency is permissible under our constitutional scheme.

Further, in paragraph 15 it is observed as under:

15. ...It is true that notwithstanding the preference rule it is always open to the recruiting agency to prescribe a minimum eligibility qualification with a view to demarcating and narrowing down the field of choice with the ultimate objective of permitting candidates with higher qualifications to enter the zone of consideration.

13. In our respectful consideration, the decision of Hon"ble Supreme Court in Surinder Singh (supra) squarely covers the issue in question of present case and is fully protecting the cause of the writ petitioner.

14. A bare perusal of the aforesaid provision reveals that all the candidates to be considered for regular selection to the post of EDDA are to be in possession of VIII standard and preference shall be given to the candidates having matriculation. However, no weightage would be given to the higher qualification. In this respect, we find force in the submissions of the learned Counsel for the petitioner that the learned Tribunal had erroneously taken a view that by virtue of securing highest marks by respondent No. 4 Sridhar in Middle standard/VIII standard he should be given appointment in preference to the petitioner ignoring the fact that he is matriculate and also is in the possession of matriculation certificate.

15. In view of the above observations and in the light of decision in Surinder Singh (supra) the impugned order, dated 10th October, 2000, is not legally sustainable and the same is, therefore, set aside, and it is ordered that the claim of the petitioner is to be considered for the regular post of "EDDA", After setting aside the impugned order it goes without saying that the appointment of respondent No. 4 is thereby annulled.

The writ petition is allowed. No order as to cost.